DOCUMENT RESUME

ED 153 268 CS 502 033

AUTHOR Morgan, J. P.
TITLE Electronic Media in the Courtroom.
INSTITUTION Freedom of Information Center, Columbia, Mo.
REPORT NO FOI-385
PUB DATE Feb 78
NOTE 9p.

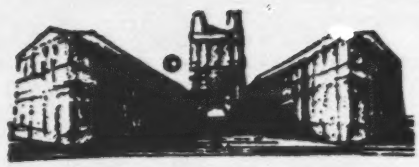
EDRS PRICE MF-$0.83 HC-$1.67 Plus Postage.
DESCRIPTORS Broadcast Industry; *Court Litigation; *Electronic Equipment; Higher Education; Journalism Education; *Mass Media; News Media; *News Reporting; *State Action; *State Legislation; Television
IDENTIFIERS *Courtroom Procedures

ABSTRACT

The history of prohibiting cameras in courtrooms is summarized in this document, and the arguments for and against the use of electronic media in the courtroom are enumerated. Several states now permit some form of broadcasting in their courtrooms; their codes and guidelines are described and evaluated. Suggestions are offered by which other states may institute new codes for using electronic media in the courtroom. (Author/RL)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED153268



SCHOOL OF JOURNALISM, UNIVERSITY OF MISSOURI AT COLUMBIA
February, 1978

U S DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION

THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

FREEDOM OF INFORMATION CENTER REPORT NO. 385

ELECTRONIC MEDIA IN THE COURTROOM

This report is based on the text of a speech given by the Honorable J. P. Morgan, Chief Justice of the Missouri Supreme Court, to the membership of the Missouri Radio-Television News Directors Association in October 1977.

Editorial Note: State bar associations and supreme courts have recently been reassessing their codes regulating the electronic media in the courtroom. The stimulus for this usually has come from media representatives, with cooperation from the judges. Committees have set rules based either on experiments in their own states or the experiences of other states. Only a few states have changed their codes to allow camera coverage, but the number is increasing almost monthly.

Some states allow coverage only with the permission of all the trial participants, while others are experimenting with coverage in all state courts. In the states implementing electronic coverage, the state supreme courts are supervising procedures. Federal courts, led by the U. S. Supreme Court, have not dealt with the issue of electronic coverage of their own system. But Chief Justice Warren Burger has made known his dislike for television, particularly the editing process.

The question of the constitutionality of barring electronic media while admitting print media is being raised, and the U. S. Supreme Court may be asked to rule on the constitutionality of the state supreme court decisions.

This report discusses the changes that have been made in these few states and is intended to help others in drafting new regulations.

Historical Background and Canon 35

Any discussion of broadcasting in the courtroom should begin with Canon 35 of the American Bar Association's Canons of Judicial Ethics. Canon 35 states that

> the taking of photographs in the courtroom during sessions of the court or recesses between sessions and the broadcasting or televising of court proceedings detract from the dignity of the proceedings, distract participants and witnesses in giving testimony and create misconceptions in the minds of the public and therefore should not be permitted.

Canon 35 was originally adopted in 1937 by the House of Delegates of the American Bar Association, which is a broadly representative policy forum for the legal profession as a whole. Canon 35 was a reaction to the spectacular publicity surrounding the trial of Bruno Hauptmann and the broadcast of that trial. (Hauptmann was convicted as the kidnaper-murderer of the Charles Lindbergh baby.) A vast majority of states (all but Colorado and Texas) adopted Canon 35, in one form or another, and it has also been embodied in Rule 53 of the Federal Rules of Criminal Procedure, which means that it applies in federal courts as well as in those state courts embracing the canon. In 1962 the Judicial Conference of the United States also condemned the taking of photographs or the broadcasting of judicial proceedings by radio, television or other means.

Effect of Canon 35 and Similar Rules and Resolutions

The American Bar Association Canons are suggestive in nature and have no binding effect on state courts. Neither do the Federal Rules of Criminal Procedure nor the Judicial Conference Resolutions, both of which apply only to federal courts. Thus it can be said that none of these three can effectively prohibit a state from allowing the news media to photograph or broadcast courtroom proceedings, should that state desire to do so. Still, most states have adopted the ABA judicial canon, or a form thereof, and prohibit such broadcasting. Only a handful of states have altered those canons to any significant degree.

The Estes Case

There may be, however, an obstacle to allowing the broadcast media free access to courtrooms that has not yet been mentioned. One Supreme Court case on the subject is crucial in this area, although there is some dispute over precisely what it holds as far as future efforts to open the courtroom to the media are concerned. The case is **Estes v. Texas** [381 U. S. 532 (1965)] and it involved the criminal trial of Billie Sol

Summary: This report summarizes the history of the prohibition of cameras in courtrooms and the arguments pro and con. It presents the new codes and guidelines that have been adopted by states to permit electronic coverage, and it suggests steps to be taken toward implementing new codes in other states.

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY
Freedom of Information Center
TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC) AND USERS OF THE ERIC SYSTEM."

CS502033

Estes by a state court in Texas.

During that much publicized trial, and during a pre-trial hearing approximately one month before trial, a great number of television cameras, radio broadcasting equipment and photographers were present. They recorded portions of the trial and the pre-trial hearing. Television and radio broadcasters were given almost a free rein at the hearing. A newspaper account of the proceedings reported that

> A television motor van big as an intercontinental bus was parked outside the courthouse and the second floor courtroom was a forest of equipment. Two television cameras had been set up inside the bar and four more were aligned just outside the gates. . . . Cables and wires snaked all over the floor.

This pre-trial hearing was broadcast live and on the evening news complete with commercial messages throughout. By the time the actual trial began one month later, a wooden enclosure had been built in the back of the courtroom and television cameras were required to remain in that enclosure. There was a horizontal opening in this huge, box-like structure so that the cameras could shoot from it. It also allowed everyone in the courtroom to see that they were being filmed. Still photographers were allowed to take pictures from anywhere in the courtroom except within the bar area.

The court specified what could be televised and broadcast. First of all, voir dire of the jury was not allowed to be televised live. Nor was the examination of witnesses during trial. And television cameras were not allowed to record with sound these portions of the trial.

Portions of the trial were filmed without sound and were shown on the nightly news broadcasts with comment by the newscasters. There was no live radio or television coverage of the trial at all until the judge permitted live coverage of the prosecutor's argument to the jury and the return of the jury's verdict along with its acceptance by the court. Defense counsel objected to having his summation to the jury photographed or filmed, so the cameras were directed at the judge while the defense was making its closing argument.

Estes was convicted and that conviction was affirmed by a Texas appeals court. He appealed to the U. S. Supreme Court, which reversed his conviction 5 to 4, holding that the broadcasting activities at the pre-trial hearing and at the trial itself deprived the defendant of his right to due process under the 14th Amendment to the Constitution.

The big problem with the Estes case is that the nine justices produced six separate opinions totaling 85 pages, and it is difficult to determine exactly what they did hold regarding broadcasting. Of the five majority justices, four of them, none of whom are now still on the Court, seemed to hold that televising a criminal trial in and of itself violates the federal constitution, regardless of how inconspicuous the cameras or radio equipment might be. The fifth justice in the majority, Justice Harlan, said the case should be reversed because of the circus-like atmosphere in that particular case, but indicated that he was not ready to make a blanket ruling that television coverage should be prohibited in each and every case. The four dissenting justices expressed some concern as to whether televising trials was a good idea, but they were not prepared to rule it unconstitutional, even in the less than ideal circumstances of the Estes case. The Court has not spoken on this issue since Estes, although in the famous Sam Shepard murder trial case, the Court did reverse Shepard's conviction because of the pervasive and prejudicial publicity that involved broadcasts outside of the courtroom.

What Does Estes Mean?

First, the decision applies only to criminal trials. Further, only a very broad reading of the case can interpret it to mean that it is applicable to appellate arguments; that is, the oral argument of the attorneys in appealing a case after trial to either a court of appeals or a supreme court.

Secondly, there was no consent by the parties in Estes to the television or broadcasting activities. Most observers think the result would have been different had there been some form of consent by the parties.

Finally, and perhaps most importantly, the news media activities in Estes were, to say the least, not conducive to maintaining the dignity and decorum of the courtroom. The confusion and disruption caused by the news media in the Estes case apparently created a genuine "circus" atmosphere. Perhaps one more point is worth making in that regard. The Estes case occurred more than ten years ago, and in the past decade there has been a marked improvement in the technology of broadcasting equipment. For example, in Estes one can see in pictures taken of the trial proceedings, rows and rows of bulky cameras and lights — a far cry from today's mini-cameras. The radio mikes also were large and unwieldy, and it is doubtful whether the sheer mass of equipment introduced into the Estes trial would be necessary today.

In any event, it is clear that Estes does not in fact answer all of the questions posed by an inquiry into bringing broadcasters and their equipment back into the courtroom.

The Canons Since Estes

The American Bar Association's position in Canon 35 has not changed since Estes. Nor have the positions of most of the states that patterned their own rules after Canon 35. However, there are a few states that have experimented with variations on the canon and some that have gone even further. Texas, at the time of the Estes case, allowed the broadcasting of trials at the discretion of the judge.

Arguments Against Allowing Broadcasting in the Courtroom

1. Television has an adverse impact on jurors, witnesses, the judge and the defendant in criminal cases.

Jurors — Many contend that the knowledge of a juror that he is being filmed or recorded may cause him to be preoccupied with the telecasting or recording rather than with the testimony. Further, a juror might later be harassed by persons who saw him on their television screens. Finally, if retrial becomes necessary, it might be difficult to find impartial jurors who did not see some part of the trial when it was first broadcast.

Witnesses — It is also claimed that witnesses could be affected to the point where they either would become too timid or would begin to "act," neither of which is in the interest of justice. It is further suggested that the knowledge that a trial would be televised or otherwise broadcast might inhibit an already reluctant witness from ever coming forward.

Judges — Some observers also feel that broadcasting would have an adverse effect on the judges. In the Estes case, Justice Clark argued that televising a trial places too

great a responsibility on the trial judge to worry about camera placement or whether to censor certain portions of the proceedings. His time, it is felt, should be better spent on the ordinary matters involved in conducting a trial from the bench.

Defendants — In Estes, Justice Clark also reasoned that televising a trial would have a harsh impact on a defendant who has his dignity and self-possession assaulted just by being a "broadcasted accused." In that respect, it is suggested that broadcasting threatens the defendant's capacity for an effective defense, and that he will be convicted in the public eye before the trial is even over.

2. The confidence in our courts and the dignity of the courts will be impaired by broadcasting activities.

This second major argument suggests that, aside from distracting all of the participants with the diversion of a multitude of equipment and personnel, broadcasting is, after all, a form of entertainment and commercial. As such, it represents an assault on the dignity of the court. Proponents of the ban on broadcasting activities say our courts exist to administer justice. They are like hospitals, open to the public, but no person may interfere with their essential purposes. This argument suggests that the courts provide a sanctuary that will be turned into a circus if broadcasting personnel troop in.

3. The news media will broadcast only the sensational and will sensationalize the ordinary.

This may be the biggest fear of those who do not want broadcasting of courtroom activity. They fear that television and radio will use only the one-minute segment of the trial where a witness breaks down or a judge admonishes counsel. They assume the cameramen and film editors will never be interested in the significant legal issues but only in the human drama of the event. There is also the feeling that cameras and mikes will show up only at the bizarre murder trial and will ignore those issues that really affect the people of the state; for example, the appellate argument concerning sovereign immunity, a somewhat dull but crucial subject.

These are the major arguments of those against allowing broadcasting in the courtrooms. Most of the other arguments put forward are a variation on these themes.

Arguments For Allowing Broadcasting in the Courtrooms

1. Television or radio need not be a distraction for anyone — jurors, witnesses, judges or defendants.

Those who advance this position admit that the broadcast media have the potential to create confusion and chaos. They admit that we have all seen chaotic news conferences and "media events." But they insist that the judiciary and the media are now mature enough to meet the responsibilities attendant on removing the ban on broadcasting. Courts might allow only one camera and microphone, on a pool basis. The media and the courts might formulate plans for the orderly coverage of court activities, with ground rules for when a camera crew could set up or break down its equipment. Equipment and personnel could be deployed in an orderly manner.

Further, it is suggested that new advances in equipment and techniques have led to virtually soundless equipment that also allows coverage with existing light. Photographers and cameramen can "push film" in processing and developing and often get by without elaborate lighting systems. Further, the advent of the mini-camera means video tape can be utilized, making it that much easier to pool facilities and dub copies.

In other words, the distractions of the media need not be significant if the media are deployed in an unobtrusive and restrained manner.

2. Broadcasting can enhance, not impair, the dignity of our courts.

Proponents of this argument reason that the only way the proceedings can get out of hand is if the judge irresponsibly panders to the media. Enforcement of our many canons of ethics and assumption of responsibility can force judges and lawyers alike to act in a thoughtful and upright way. Further, it is argued that the judiciary has a responsibility to allow the media to provide uninhibited coverage of judicial proceedings. The public has a right to know. That right cannot be maintained by having a reporter merely read over the air an account of what he saw in court. And artists' sketches are not sufficient for the task. These opponents of the ban also suggest that what primarily threatens fair trials and the reputation of the judiciary is the fact that all the public now knows is what it can glean from the carefully orchestrated press conferences that accompany trials of note.

Is there more justice in having the prosecutor call a press conference to parade an accused suspect before the cameras than there is in allowing responsible journalists to show the people at home exactly what did occur at the subsequent trial? While others argue that broadcasting trials will mean conviction in the public eye of all accused, it also can be argued that there will be vindication in the public eye of those unjustly accused.

3. Broadcasting trials need not result in sensationalism.

This argument counters the theory that film editors will use only the clip of a witness breaking down or that assignment editors will cover only gory murder trials. According to those who want to remove the ban, these are decisions news gatherers are allowed to make in practically every field of daily life except that involving the courts. If the profession of journalism is trusted in every other respect, then why not trust journalists to come into the nation's courtrooms and do what they are there to do — that is, report. Editorial decisions are made by journalists, not politicians, police or others in the public sphere. Why should they be made by the courts? As former CBS President Frank Stanton once phrased this argument,

> Misconceptions, misinterpretations, and distortions of court decisions are inevitable if the only voices in government to whom the people are denied direct access are the voices of our judges.

In other words, the media must be trusted to act in a responsible fashion and not indulge in sensationalism. They are trusted in other respects of news coverage. Why not in this one?

The Approach in the States

It might be instructive to examine the present situation in five states that have taken steps to allow some form of

broadcasting in their courtrooms. They have done so in most cases by changing their judicial canons. In these instances, the supreme court has generally taken charge of the program and formulated the alteration of the traditional Canon 35.

These states are Alabama, Washington, Georgia, Florida and Colorado. It is worthwhile to take a look at how they have gone about this task, in some cases in greater detail than in others, to determine which methods have worked in the best manner for both the courts and the news media.

Alabama — The New Canon

In Alabama a new judicial canon was drawn up in December of 1975. According to the State Courts' Administrator's Office there, the canon's basic goal is to allow cameras and other broadcasting equipment into the courtrooms without impairing the dignity of the proceedings. Basically, this is how it is done in Alabama:

1. Cameras are allowed into court only with the express permission of every party involved in the case.
2. If any participant who agreed in writing beforehand changes his mind during the trial, he may request the judge to stop the filming or recording, and the judge will do so. At his discretion, the judge also may halt the broadcast of any witness or party.
3. The judge may allow the broadcast of any judicial hearing apart from a trial.
4. The canon authorizes each judicial circuit to come up with its own plan for allowing broadcasting in the courtroom. Each of these plans must be approved by the supreme court before it can be implemented. Without an approved plan there can be no broadcast activity.

The Mobile, Ala., Plan

Not all Alabama circuits have come up with broadcast plans; in fact, only a few have done so. One such circuit embraces the city of Mobile. There the plan was drawn up with the assistance of a member of the supreme court appointed for that purpose. The Mobile plan works this way:

1. No more than three cameras are allowed in the courtroom at once.
2. Existing light must be used. No station may set up additional lighting in any way.
3. Each camera position must be taken no later than five minutes before court begins. No one may set up or leave a camera position during court proceedings, though film or tape may be removed from the courtroom by runners to meet deadlines.
4. No camera position may be broken down until court has adjourned or recessed.
5. No microphones may be placed anywhere in the courtroom except in the rear of the courtroom where the camera placements are located. This applies to radio personnel who must place their recorders in that rear portion of the room.
6. At no time may cameras be placed anywhere but in the designated area in the rear of the room. However, cameras may scan the courtroom from that fixed position.

The Response

The response to this plan has been very good, by both the courts and the media. The State Courts' Administrator's Office reports that the judiciary is well satisfied that the courtroom's dignity has not been upset. Judges seem to feel the plan works because:

1. Written permission is required from participants in the trial.
2. The trial judges have used their discretion wisely and can halt the proceedings or deny access when they feel it is necessary.
3. The media have been more than cooperative and have been willing to abide by the ground rules established in advance.

Members of the media also are happy with the arrangement. Representatives of the news department of Station WKRG, the CBS affiliate in Mobile, report that they have covered two major trials recently, one involving a defendant who sought the death penalty, not unlike Gary Gilmore. Two of the three stations covering that trial used video tape and had no problems with shooting under existing light with Sony equipment and extra power lenses. The one station that used film was able to open up its F Stop and push the film in the processor to achieve broadcast quality without additional lighting. Apparently, in a quiet courtroom, shotgun microphones did the job satisfactorily. There was no problem with the quiet mini-cams, but the film camera was apparently noisy enough to provide something of a distraction.

Interestingly, nearly all of the participants in the Gilmore-type trial had a difficult time deciding which way to direct their attention. The prosecutor finally decided to address both the jury and the cameras in his closing argument. He turned back and forth, apparently managing to divide his attention between the two areas. When it was over, the trial judge went on record as saying that he did not feel that the electronic media had impaired the dignity or efficiency of his court.

Also, in the past in Alabama, provisions have been made for broadcasting of appellate argument in the supreme court. There the court required that the cameras used be hidden in the back of the room, however.

Washington — The New Canon

The state of Washington also has a new judicial canon, which specifies the following:

1. The canon permits broadcasting, televising, recording or taking photos in the courtroom during a session only if permission has been expressly granted by the judge, and under such conditions as he may prescribe.
2. Media personnel must not distract participants or impair the dignity of the proceedings.
3. No witness, juror or party who expresses any prior objection to the judge shall be photographed nor shall the testimony of such a witness, juror or party be broadcast or telecast.

Guidelines

The courts have come up with some guidelines in Washington for use by trial judges when permission is granted to the news media. Among the guidelines are the following:

1. The media representative must tell the bailiff before a court session starts that he desires to record or broadcast live from the court.
2. Absent prior instruction from judge to bailiff, the broadcasting equipment must then be situated behind the last row of spectator seats by the least-used aisleway or in some other unobtrusive location.
3. Unless the judge directs otherwise, only one television camera is allowed. Pooling must be done.

4. Further, television microphones must also serve radio, and radio must be permitted to feed from the television sound system. Multiple radio feeds must be provided by a junction box. All concerned must advise the court beforehand as to how the pool will be handled at any given time.
5. All running wires must be securely taped to the floor.
6. All equipment must be as inconspicuous as possible.
7. Film and tape changes should be made only during recess, if at all possible.
8. No television camera or radio mike should have any light on it that indicates whether or not it is on, such as the red light that appears on some studio cameras.
9. No additional lights may be set up except in appellate argument and then only with the judge's permission.
10. Broadcast representatives' dress should not set them apart from other participants in the trial.
11. Finally, no equipment may be moved except during recess and equipment must be in place no later than 15 minutes before each session.

The Response

Washington's new approach is only about a year old and, to date, has not been widely used, according to officials in Washington's State Courts' Administrator's Office. However, on the occasions that it has been used, neither the media nor the courts have had any particular difficulties with Washington's rather strict media guidelines.

Georgia — The New Canon

The state of Georgia is just now in the process of implementing new rules regarding broadcasting in the courtroom. Georgia has taken great care to go about this revision in the proper manner and has formed a number of committees to report on recommendations for how it should be handled. Several guidelines have emerged, and among them are the following:

1. Written consent must be obtained from the parties before broadcasting can be allowed. A special form is to be provided by the supreme court for this purpose.
2. The number of cameras and recording devices will be limited, but either a pooling arrangement or a shared time arrangement will be utilized to insure that all will be allowed to participate.
3. All equipment is restricted to a designated area and television cameras that produce distracting noise or sound will be barred.
4. Existing lighting must be used, unless permission of the court is given for some other arrangement.

Modification

In Georgia until recently, only appellate arguments at the supreme court level could be broadcast. In fact, several of those have been televised live. Now, however, the supreme court has taken steps to allow lower court trial coverage as well, with considerable discretion in the trial court judge to handle media problems.

Georgia also is taking a look at the possibility of dispensing with the requirement that the parties have to give written consent. Officials there have noted that the majority of judges opposed to the broadcasting of court proceedings in the Estes case are no longer on the Supreme Court, and they believe it now may be deemed constitutional to allow broadcasting **without** any requirement of permission.

The Response

The response in Georgia thus far to the supreme court cases that have been televised has been very good. The media have reacted favorably, as have attorneys and judges. One official of the Georgia Supreme Court has said that media representatives have preserved the dignity of the court much better than have some attorneys.

Georgia did a superlative job of planning and researching before it ever began to formulate a program. Additionally, the Georgia plan was initially, and is still, a **totally** joint effort between media representatives and the courts.

Florida — The Experiment

Florida's program is unique. Officials there have embarked on a year-long experiment to determine whether or not the broadcast media **can** successfully be allowed into courtrooms and how best to go about it. Briefly, some of the features of the Florida plan are these:

1. **No permission of any party is required.** However, the trial judge does have the discretion to order broadcasting equipment shut off if a witness requests it and if the judge deems it advisable. This is to take care of problems like protecting the identity of a police undercover officer.
2. Equipment, including radio equipment, must be set up on a pooling arrangement.
3. No additional lights may be set; existing lighting must be used.
4. Mikes, however, can be set up before court begins.
5. Only certain types of camera equipment are authorized. This is to insure that only noiseless equipment will be used.
6. Ordinarily, all equipment must remain in a stationary position in the back of the room.
7. In appellate courts two camera positions may be used and may be set up on the sides of the courtroom.

Review

This system will be reviewed at the end of the experimental year (July, 1978) to determine its success. However, even now officials of the Florida court system are meeting to review how things have been working out.

The Zamora Trial

The system faced a very stern test recently in the trial of Ronald Zamora, the teen-ager whose defense to a murder charge was that television violence drove him to commit his crime. Under the Florida program, Zamora did not have to give his consent to the coverage. And each night, starting at 10 o'clock, that trial was broadcast almost in its entirety on a Miami PBS station. In addition, the trial attracted national media attention. This case may provide the latest word from the U. S. Supreme Court on the question of broadcast coverage, and whether or not a defendant's Fourteenth Amendment due process right is violated by having his trial broadcast.

An official involved with the Georgia program has said that he spent a day observing the Zamora trial and the pooling arrangement worked well, as far as the distraction question was concerned. There was no real distraction there, he said, despite the fact that the trial invited national press coverage. The circus-type atmosphere of the Estes trial was not appar-

ent. Pooling arrangements were used and the media were most cooperative.

The Zamora trial provided a new problem for lawyers that no one seemed to anticipate. Since their every move was scrutinized by armchair Perry Masons, they received plenty of unsolicited advice. A recent Associated Press article indicated that defense attorney Ellis Rubin was getting a lot of help in his defense of Zamora. Suggestions were pouring in from callers across the nation.

"Get rid of juror number four," said one caller to Rubin. "I just have a feeling about her."

A fellow member of the bar told Rubin he was using too much eye shadow.

Another caller told Rubin to keep juror number five. The caller was an attorney and could not resist calling Rubin to tell him that number five was just the kind of juror he would want if he were trying the case.

Colorado — Introduction

While states like Georgia and Florida are just beginning to experiment with allowing broadcasting of courtroom activity, one state, Colorado, has been allowing cameras and radio equipment into its courtrooms for about 20 years now.

The Canon

The Colorado Judicial Canon provides for broadcasting only when all accused persons have given their consent to the trial judge. Beyond that requirement, certain guidelines have been set up that generally include the following:

1. Existing lighting must be used; no lights can be set.
2. Microphones can be set only in the areas designated for broadcasting facilities.
3. While pooling arrangements are provided for in the guidelines, they are not always used in practice, if only a few stations are represented.
4. The trial judge has great discretion in dealing with media coverage of a given trial.
5. No live coverage is allowed.
6. If a witness objects, the judge will order the media to turn off the equipment.

In Practice

The central thrust of the Colorado program is the discretion vested in the trial judge. Reporters from the Denver area say the trial judge rarely demands a pooling arrangement. Usually, if only a few stations are interested in coverage, they will be given a place either in the jury box, if it is a court-tried case, or in the back of the room in a jury-tried case. In one instance, additional lighting was allowed when coverage of an appellate argument before the supreme court was involved.

Trial Judge Discretion

Perhaps the overriding feature of the Colorado system is the enormous amount of discretion that has been vested in the trial judge over the years. Newsmen in the Denver area say that the judges have worked out a rather informal method of dealing with the media. Generally, each judge decides his own ground rules. For example, when media representatives decide they are interested in a certain case, they will approach the judge and ask whether or not he would object to coverage. Usually he has no objection.

They then approach the parties and ask for their permission. They have found that about 50 percent of the time no objection is made. They then discuss with the judge where to set up the equipment. Often he will tell them to use their own judgment. Rarely will he actually require a pooling arrangement. Most judges demand that no station logos be seen in the courtroom and that radio persons use a 120-minute cassette so that they will not have to interrupt the proceedings. But recorders usually are allowed to be placed practically anywhere, and some reporters say that judges are very flexible about allowing cassettes to be changed during a lull in the trial; for example, between witnesses. Judges have not appreciated, however, noisy film cameras, especially the Bell and Howells.

Outstate Colorado

This kind of loose cooperation is particularly evident in the Denver area. Reporters say, however, that in outstate Colorado, trial judges are more suspicious of the media and less willing to deviate from strict guidelines. In fact, it appears that most of the broadcasting of courtroom activity in the state takes place in Denver, and Station KOA has even hired a court reporter who does nothing but attend trials and report on legal proceedings.

Pooling

The one problem that seems to arise, especially in the Denver area, is connected with the absence of pooling arrangements. A former Denver assignment editor admits that while it is better for the media's purposes not to pool, he believes the court should utilize pooling more than it does. Apparently, when several stations do cover a trial, there is some confusion and on a few occasions, the trial has taken on some of the chaos of a large press conference, with cameramen occasionally discussing F stops loudly enough to warrant an admonishment from the bench.

Technical Results

As in other states, reports from Colorado indicate that there have been very few technical problems. The use of shotgun mikes has never proved a real problem for reporters because generally the courtroom is relatively quiet. By pushing film, and more recently, by using the new video tape mini-cameras, broadcast quality film and tape have been achieved with only existing light.

General reaction

In general, the reaction in Colorado has been good. Stations have invested time, not only in the celebrated criminal trials, but in landmark cases of public import as well. For example, one newsman there says that he spent nearly a week recently covering a trial involving environmental problems in connection with landfills.

One reaction heard from several representatives of the media and from the courts as well is that media coverage of the courts has not been as extensive as had been anticipated. This may be because, by its nature, the courtroom story can tie up a film crew for a long period of time; or because, generally, most trials are far less exciting in reality than they are in television's fictionalized versions. Nonetheless, many media representatives in Colorado have expressed genuine

satisfaction that the media are no longer screened out of court proceedings when they desire to provide coverage, except, of course, in a case where a party will not grant permission.

Other State Action

Kentucky — There is no statewide rule restricting electronic court coverage. Judges of the Jefferson County (Louisville area) circuit court agreed in August, 1977, to grant the media "unrestricted access to their respective courts," except where coverage is disruptive or in "sensitive trial situations involving children and in any matters of domestic relations." In December the Kentucky attorney general's office said that barring cameras from fiscal courts was a violation of the state's open meetings law.

New Hampshire — The New Hampshire Supreme Court has amended its Code of Judicial Conduct to permit electronic coverage of civil and criminal trials with the approval of the judge. This new rule became effective Jan. 1, 1978.

Wisconsin — The Wisconsin Supreme Court has ordered its rule prohibiting electronic courtroom coverage suspended for a one-year period beginning April 1, 1978. The court has proposed that the one-year experiment follow the Florida guidelines, which do not allow participants to object to coverage. A hearing was scheduled for Feb. 20 to consider amendments to the Florida rules or other guidelines to govern the use of audio-visual equipment in the courtroom during the year.

Indiana — The Chief Justice of the Indiana Supreme Court, acting on behalf of two judicial commissions, sent a letter to Indiana trial court judges reinforcing the Code of Judicial Conduct. He warned that any deviation from the strict prohibition of electronic coverage would be a "major breach" of conduct. The letter said,

> A judge should prohibit broadcasting, television, recording or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of the court or recesses between sessions.

Constitutional Developments

The Estes case still provides the legal guidelines to the constitutional question of equal treatment of the electronic media and the print media under the First Amendment and the need to balance that with the defendant's guarantee of a fair trial. But with unobtrusive electronic coverage now possible and probable appeals of recent decisions in state courts, the U. S. Supreme Court may be asked again to consider these questions.

A Massachusetts court has ruled that admitting print media to a city council meeting while excluding television is "presumptively unconstitutional."

A U. S. district court in Texas has ruled that it is discriminatory to admit the print media to an execution while excluding television.

A U. S. court of appeals in California has ruled that it is discriminatory to admit the print media into prisons while excluding television.

But the U. S. Court of Appeals for the 5th Circuit has ruled that it is constitutional to exclude television from executions while admitting the print media.

Some Suggestions

In reviewing what some states have done, the inescapable conclusion is that no state should proceed without a specific plan that has been carefully prepared. Also, there really can be no successful plan in this field without cooperation between media representatives and representatives of the court. Both sides have competing goals, of course, but they have found that they can work together harmoniously and successfully.

The Georgia Plan

The manner in which the state of Georgia has gone about this is illustrative and worth copying. Georgia began with a 31-member advisory committee, made up of representatives of the supreme court, the organized bar, attorneys, television, radio and newspapers. They then formed subcommittees that reported on some of the following topics:

1. Rule change proposals.
2. Procedures for news reporters.
3. The state of the law and how best to comply with it.
4. Camera locations, lighting, microphones and other technical matters.
5. Procedures and permission forms.
6. Credentials.

All of these subcommittees eventually came up with recommendations and proposals that were acted upon by the executive committee under the guidance of the Chief Justice of the Georgia Supreme Court, H. E. Nichols. An aide to Chief Justice Nichols has said that without the full cooperation of the media, this plan could never have gotten off the ground, and he is most complimentary of media compliance with the ground rules established thus far.

Any state interested in following the lead of Georgia and the other states mentioned should also invest the time and energy required to come up with a plan that represents the interests of all involved.

Specific Guideline Suggestions

Any state that proceeds in this direction should take pains to be specific in its plan and guidelines. A few specific ideas worth pursuing are:

1. A pooling arrangement should be required for television and radio in all cases. This is the only way to avoid confusion and congestion. Plans should be made far enough in advance of trial so that, as is the case in Washington, radio can plug right into the television sound system. Without such an arrangement, there could be three network affiliates, an independent and an educational station all scrambling for position, not to mention network crews, out-of-town crews and countless radio stations. Anyone who has ever attended a major press conference knows what must be avoided. A pool arrangement of some type seems to be the best way to deal with that potential hazard.

2. One stationary position must be assigned to the broadcast media, preferably in the back of the courtroom. Ideally, all courts could have small rooms with camera holes so that the media could be totally unobtrusive. However, cost is prohibitive. The best that probably can be done is to make sure that the camera and radio position is at least somewhat out of the way. This should not impair the quality of the film or tape.

3. No additional lighting should be allowed. Media representatives have found that with today's new video tape recording equipment and new film speeds, they can get broadcast quality video tape without additional lighting. The trouble with setting lights is that they are hot, unwieldy and very noticeable. They lend a sort of studio atmosphere that should be avoided.

4. Additionally, mike placement also should be limited. Shotgun mikes have been found to be usable. Otherwise, with a pool, a few microphones could be placed as inconspicuously as possible.

5. Any broadcast equipment would have to be set up in advance of the opening of court, not to be removed until court adjourns. Of course, film and tape would have to be removed from the courtroom as quietly as possible.

6. A specific list of authorized equipment should be made. Technicians say that much of the newer equipment available (such as Sony and Thompson) is very well suited to courtroom work. However, noisy cameras (such as Bell and Howells) should not be permitted.

7. Until the U. S. Supreme Court provides more guidance, a permission requirement should probably be incorporated into any plan. Unfortunately, this may mean that in many instances coverage will not be allowed even though it is desired.

8. The permission requirement perhaps should not apply if the parties are not individuals, but rather municipalities or counties, for example. Some thought is being given in Georgia to revising its permission requirement to allow coverage of such cases even without permission because of the dramatic public interest in some such cases and the fact that they do not involve criminal defendants as a rule. For example, in Georgia recently, a suit between a municipality and a county involving a controversial annexation question could not be broadcast because the county was unwilling to grant its permission, fearing adverse publicity.

9. The trial judge should have discretion to halt the broadcasting of certain witnesses and should be required to do so if a witness requests it.

10. Finally, any such program should be under the constant supervision of a central coordinator or coordinating committee, to handle problems that continue to arise. In each of the states discussed, officials say that problems have arisen that were never contemplated. Some central authority should be prepared to handle them.

Conclusion

The single most interesting facet of this review has been the success of cooperative efforts in the states. Nothing adverse has been heard from the courts about the media, nor from the media about the courts. Both sides seem to feel that what they are trying to accomplish is worthwhile. Both apparently feel that the most important item they can contribute to the success of their venture is an overriding spirit of cooperation. This should be the most valuable lesson to be learned from observing their efforts, and any state interested in following their lead should make certain that this spirit accompanies its plan.

SELECTED BIBLIOGRAPHY

"Alabama's Former Chief Justice Defends Broadcast Court Coverage." **Radio Television News Directors Association Communicator**, September, 1977, pp. 7-8.

"Broadcasters Gain Other Allies In Campaign to Cover Courts." **Broadcasting**, Nov. 28, 1977, pp. 49-50.

"Cameras In The Courtroom: How to Get 'Em There." **An Associated Press Managing Editors Association Freedom of Information Report**, October, 1977.

Capener, Ted. "Media Gain in Court Coverage in Some States, Lose in Others." **Radio Television News Directors Association Communicator**, April, 1977, pp. 2-3.

Capener, Ted. "Pulling The Plug on Courtroom Coverage." **Radio Television News Directors Association Communicator**, January, 1978, p. 2.

Capener, Ted. "Three States Report Breakthroughs in Broadcast Coverage of Courts." **Radio Television News Directors Association Communicator**, June, 1977, pp. 2-3.

"Court Limits Keep TV, Radio Fuming." **Milwaukee Journal**, Dec. 1, 1977, p. 14 Accent section.

"Electronic Media In Courtrooms Limited In Indiana By New Edict." **Variety**, Dec. 28, 1977, p. 35.

"Florida Judge Evaluates Camera Coverage of Trial." **Editor and Publisher**, Jan. 7, 1978, pp. 22-29, 36.

"Florida OK's One-Year Test of Court Coverage." **Broadcasting**, June 27, 1977, pp. 40-41.

"Ga. Supreme Court Lets Cameras In." **Broadcasting**, Sept. 26, 1977, pp. 51-52.

Helwig, Gilbert J. "Should Special Facilities Be Provided for Courtroom Photography and Broadcasting?" **Judicature**, January, 1967, pp. 163-67.

"High Court Approves Test of Camera Use." **Milwaukee Journal**, Dec. 24, 1977, p. 1.

"High Court Ponders Camera Experiment." **Minnesota Press**, January, 1978, p. 3.

"High Court Taping Urged." **Washington Post**, Nov. 18, 1977, p. 2-A.

"Lights, Action, Camera." **The Progressive**, February, 1978, p. 10.

Natt, Ted M. "Pictures On Trial; Verdict Not In Yet." **American Society of Newspaper Editors Bulletin**, September, 1977, pp. 12-13.

"One Pool Camera Allowed at Trial in Florida Court." **Editor and Publisher**, June 25, 1977, p. 18.

"Opinion Says Session Can Be Open to TV." **Louisville Courier-Journal**, Dec. 29, 1977, p. B2.

"Ruling Sought on Cameras In Court." **Miami Herald**, July 27, 1977, p. 4B.

Salant, Richard. "Broadcasting Supreme Court Proceedings." **New York Times**, Nov. 16, 1977, p. 35.

Shales, Tom. "A Case for Cameras In the Courtroom." **Washington Post**, Aug. 24, 1977, p. B1.

Spotts, Peter N. "More States Letting Cameras Into Courtrooms to Cover Trials." **Christian Science Monitor**, Aug. 11, 1977, p. 9.

Tello, Steve. "Photojournalism Stands." **News Photographer**, November, 1977, pp. 10-12.

"TV Goes on Trial." **TV Guide**, Jan. 14, 1978, pp. 6-11.

"TV In Court: Seven States Approve." **News Media and the Law**, December, 1977, pp. 23-26.

"TV No Longer Viewed as Fair Trial Threat." **Kansas City Star**, Feb. 2, 1978, p. 12.

Weis, Joseph F. Jr. "Electronics Expand Courtrooms' Walls." **American Bar Association Journal**, December, 1977, pp. 1713-16.

Wilkin, Robert N. "Judicial Canon 35 Should Not Be Changed." **American Bar Association Journal**, June, 1962, pp. 540-41.

Wilson, Jerome. "Justice in Living Color: The Case for Courtroom Television." **American Bar Association Journal**, March, 1974, pp. 294-97.

"Zamora Trial in Perspective: Inside the McLellan County Court." **Quill**, December, 1977, pp. 4, 31.